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No.

81-2144

In The Supreme Court of the United States

OCTOBER TERM, 1981

FANNIE GODWIN,

Appellant,

v.

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,

Appellees.

On Appeal from the Supreme Court of Louisiana

MOTION TO DISMISS OR AFFIRM

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TABLE OF CONTENTS

	Page
Table of Authorities.	i
The Regulation Involved and the Nature of the Case	2
A. The Regulation	2
B. The Proceedings Below . .	3
Argument.	7
Conclusion	17

TABLE OF AUTHORITIES

Cases

Cox v. Louisiana, 379 U.S. 536, 13 L.Ed. 2d 471, 484, 85 S.Ct. 684	8, 14
Cox v. New Hampshire, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049	14
Giboney v. Empire Storage and Ice Co., 336 U.S. 490, 502, 93 L.Ed. 834, 843, 69 S.Ct. 684	8
Grayned v. City of Rockford, 408 U.S. 104, 33 L.Ed. 2d 222, 231, 92 S.Ct. 294 (1972).	14
Heffron v. International Society for Krishna Consciousness, Inc., __U.S.__, 69 L.Ed. 2d 298, 101 S.Ct. 2559 (1981)	14-16

Kleindienst v. Mandel, 408 U.S. 753, 765, 33 L.Ed. 2d 683, 92 S.Ct. 2576 (1972) . . . 10

Kovacs v. Cooper, 336 U.S. 77 (1949). 8

Pell v. Procunier, 417 U.S. 817, 824, 94 S.Ct. 3800, 41 L.Ed. 2d 495 (1974) 10

Constitution, Statutes and Regulations

First Amendment to United States Constitution . . . . . passim

Rule VII of Rules of Procedure of the East Baton Rouge Parish School Board . . passim

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The Appellee moves the Court to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the Supreme Court of the State of Louisiana on the grounds that it is manifest that the questions on which the decision of the cause depends are

so unsubstantial as not to need further argument.

I.

THE REGULATION INVOLVED AND THE NATURE OF THE CASE

A.

The Regulation

This appeal raises the question of the validity of a certain procedural rule that was adopted by the School Board for the Parish of East Baton Rouge, State of Louisiana. The procedural rule in question, which was designated by the School Board as Rule VII, provides in pertinent part as follows:

> "No sign, placard, or poster, which is carried by hand, shall be permitted in the School Board office building or any of its rooms."

The effective date of this procedural rule was January 5, 1981.

This procedural rule does not prohibit a person from attaching a sign to his person or clothing and entering the School Board office building or any of its rooms. In addition, the rule in question does not base the prohibition against hand-carried signs on the content of the language found in said signs. The prohibition against all hand-carried signs also eliminates the possibility of the presiding officer of the School Board improperly using his discretion to allow some hand-carried signs while not allowing others. All signs carried by hand are forbidden by this rule.

B.

The Proceedings Below

At the first School Board meeting following the effective date of the new set of rules of procedure, which set

included Rule VII, the Appellant, Fannie Godwin, with full knowledge of the existence of Rule VII, intentionally took a hand-carried sign into a School Board meeting. She held the sign above her head during the meeting, at which time the presiding officer of the School Board recessed the meeting and asked her to remove the sign as required by Rule VII. When she refused to remove the sign, the presiding officer asked her to please leave the meeting. When she also refused to obey that request, she was taken from the building by non-uniformed police officers.[1]

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[1]The police officers were not employees of the School Board and were not being paid by the School Board to be present at said meeting. As the State District Court Judge stated, "the issue is not whether or not this person was arrested. ...The question before this Court is whether or not a person has a right to bring a hand-carried sign or placard or poster into the School Board

Shortly thereafter, the appellant filed suit in State District Court, seeking declaratory relief and an injunction against the School Board and its presiding officer prohibiting both from enforcing the portion of Rule VII quoted above. After conducting a hearing on the request for preliminary injunction, the State District Court found that Rule VII was not unconstitutional and ordered that the suit be dismissed at plaintiff's costs.

Appellant then applied to the First Circuit Court of Appeal for the State of Louisiana for supervisory writs and an order prohibiting the School Board from enforcing Rule VII during the pendency of the appeal. That appellate court

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building and its rooms during meetings." References made by Appellant to her arrest are not, therefore, relevant to the issues presented herein.

denied both the application for supervisory writs and the request for a stay order, after which the Appellant appealed the decision of the First Circuit to the Louisiana Supreme Court. That Honorable Court granted the application for supervisory writs and ordered the First Circuit to hear the appeal as expeditiously as possible.

After receiving briefs from both parties, the First Circuit Court of Appeal concluded, on April 8, 1981, that Rule VII was a constitutional exercise of the authority of the School Board and that the trial judge had properly denied the injunctive relief sought by appellant. 403 So.2d 72 (La. App. 1st Cir. 1981). The Appellant then filed an application for writ of review with the Louisiana Supreme Court, which

application was granted by that Court. After receiving briefs and oral arguments from both parties, the Louisiana Supreme Court, on December 14, 1981, affirmed the rulings of the State District Court and State Court of Appeal. 408 So. 2d 1214 (La. 1981).

II.

ARGUMENT

A.

No substantial federal question warranting Supreme Court review is presented by Appellant, since she has failed to show abridgment of her rights of free speech.

Before examining the question of whether the regulation on free speech contained in Rule VII, if any, is necessary and appropriate, a more basic question must be answered. That question

is whether there has been a real abridgment of Appellant's right of free speech. Kovacs v. Cooper, 336 U.S. 77 (1949). As this Court indicated in the case of Gibboney v. Empire Storage and Ice Co., 336 U.S. 490, 502, 93 L.Ed 834, 843, 69 S.Ct. 684,

> "it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed."

Cf. also Cox v. Louisiana, 379 U.S. 536, 13 L.Ed. 2d 471, 484, 85 S.Ct. 453 (1965).

In this particular case, Rule VII declared a course of conduct (bringing hand-carried signs into School Board meetings) to be improper; it did not attempt to suppress First Amendment freedoms. Appellant has argued that her

sign should be considered "pure speech" and not "conduct" such as picketing. Appellee fails to see the difference, however, between a person holding a sign above her head in a meeting and a person holding a sign above her head on the sidewalk or street outside the building in which the meeting is being held. Both instances would constitute examples of picketing, which is, by Appellant's own admission, conduct and not pure speech.

Since it is clear that Rule VII addresses conduct, and not speech, that procedural rule cannot be said to abridge Appellant's right of free speech. Thus, no substantial federal question is presented for review herein.

A second factor which must be considered in determining whether there

has been a real abridgment of the rights of free speech concerns the availability of alternative means of communication. Pell v. Procunier, 417 U.S. 817, 824, 94 S.Ct. 2800, 41 L.Ed. 2d 495 (1974); Kleindienst v. Mandel, 408 U.S. 753, 765, 33 L.Ed. 2d 683, 92 S.Ct. 2576(1972). The evidence adduced at the trial before the State District Court on a motion for preliminary injunction was uncontradicted that Appellant herein had alternative means of communication available to her, and the Louisiana Supreme Court specifically recognized that fact in its opinion.

The East Baton Rouge Parish School Board has allowed public input at its meetings for several years. Appellant could have communicated the thoughts contained in her sign just as well, if

not better, by orally making that statement to the School Board and to the public.[1] As Appellant admitted at the trial on the hearing for preliminary injunction, she has regularly attended School Board meetings over the last eight (8) years and, with only one or two exceptions, has always been allowed to address the School Board concerning items on the agenda of that School Board meeting. This has been true despite the fact that many of her comments have been critical of the School Board or individual members of said Board.

Appellant has now argued that this alternative means of communication was

[1]Meetings of the School Board are broadcast throughout the Parish and community by local cable television station. Persons who make oral presentations to the Board during meetings are included in those broadcasts, but persons who sit in the audience at such meetings are not usually so included.

not available to her at the School Board meeting in question, despite the fact that she introduced no evidence in support of such contention at the trial on the hearing for preliminary injunction. Indeed, the only testimony elicited on this point came from Mrs. Eileen R. Armstrong, former President of the School Board, who clearly stated that Appellant herein could have communicated orally, at the microphone and before the television camera, the sentiments contained in her sign.

In light of the availability of alternative means of communication[1]

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[1]The Louisiana Supreme Court also mentioned the fact that Rule VII does not prevent Appellant from carrying her sign anywhere outside the School Board office building and its rooms and also does not prevent her from submitting to the School Board a written document setting forth her views on any matters before said Board.

and the fact that Rule VII addressed conduct and not free speech, Appellee would submit that there has been no abridgment of Appellant's right of free speech in this case. For that reason, there is no substantial federal question presented herein, and Appellee would respectfully submit that this Honorable Court should dismiss this appeal, or, in the alternative, affirm the judgment entered in this case by the Louisiana Supreme Court.

B.

The case presents no substantial question not previously decided by this Court.

This Court has long recognized that the right of free speech does not mean "that everyone with opinions or beliefs to express may address a group at any

public place and at any time." Cox v. Louisiana, supra, 13 L.Ed. 2d at 483-484. From this case and other cases has evolved the doctrine of "time, place and manner." This doctrine was stated in the case of Cox v. New Hampshire, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049, as follows:

> "First Amendment rights are not absolute. Reasonable time, place and manner restrictions on the exercise of First Amendment rights have long been recognized."

312 U.S. at 575-576.

Cf. also Grayned v. City of Rockford, 408 U.S. 104, 33 L.Ed. 2d 222, 231, 92 S.Ct. 294 (1972); Heffron v. International Society for Krisna Consciousness, Inc., __ U.S. __, 69 L.Ed. 2d 298, 101 S.Ct. 2559 (1981).

In the Heffron case, this Court thoroughly reviewed the jurisprudence

relative to "time, place and manner" restrictions on First Amendment rights. In Heffron, the Court set forth a three part test for determining whether a restriction on First Amendment rights is permissible:

> (1) The restriction must not be based upon either the content or subject matter of speech to be regulated; and
>
> (2) The restriction must serve a significant governmental interest; and
>
> (3) The restriction must leave open ample alternative channels for communication of the information.

69 L.Ed. 2d at 306.

In its opinion, the Louisiana Supreme Court relied heavily on this Court's opinion in Heffron, and, in fact, the State Supreme Court opinion clearly indicates that the three part test mentioned above was applied to the facts contained in the instant controversy. A simple review by this Court of the opinion of the Louisiana Supreme Court will clearly indicate that the correct constitutional standards were applied to the review of this case and that the decision made by said State Supreme Court, on the basis of those standards, was proper. Since the decision by the Louisiana Supreme Court was based on this recent decision by this Court, Appellee would respectfully submit that this appeal presents no substantial question not previously decided by this Honorable Court.

III.

CONCLUSION

Wherefore, Appellee respectfully submits that this case presents no substantial federal question warranting Supreme Court review, or, in the alternative, that this case presents no substantial question not previously decided by this Court. For that reason, Appellee respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the case by the Supreme Court of the State of Louisiana.

Respectfully submitted,

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I, JOHN F. WARD, JR., the attorney for Appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of July, 1982, I served three copies of the Motion to Dismiss or Affirm on appellant by mailing the same, through the United States mail, to Woodrow W. Wyatt, counsel of record for Fannie Godwin, at 3623 Perkins Road, Suite 6, Baton Rouge, Louisiana 70808. I further certify that all parties required to be served have been served.

JOHN F. WARD, JR.